

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for purposes of preliminary hearing, the Appeals Board finds as follows:

The claimant filed his Application for Preliminary Hearing, Form E-3, requesting medical treatment and temporary total disability benefits. Administrative Law Judge Alvin E. Witwer, after hearing the evidence presented, ordered a medical evaluation with Stephen L. Reintjes, M.D., of Kansas City, Missouri; temporary total disability compensation commencing March 25, 1994, to continue until released for substantial, gainful employment or until reaching maximum medical improvement; and, payment of previous medical expenses.

On February 2, 1994, a Preliminary Hearing was held in this matter which resulted in an Order dated February 7, 1994, entitling the claimant, as a result of a personal injury arising out of and in the course of his employment with respondent on October 11, 1993, to medical treatment with a physician to be designated by the respondent and payment of certain medical expenses.

The threshold question that has to be addressed concerning the Preliminary Hearing Order of May 27, 1994, is whether the Appeals Board has jurisdiction to review the Order. The sole issue that the respondent raises for review is whether claimant's headaches arise out of and in the course of his employment with respondent. For the Appeals Board to have jurisdiction to review this Order, one of the issues enumerated in K.S.A. 44-534a(a)(2) has to be alleged. In the present case, the respondent attempts to raise this issue by alleging that there is no causal connection between the claimant's present headache symptoms and his work-related injury he sustained on October 11, 1993.

The jurisdictional issue as to whether the claimant suffered a personal injury arising out of and in the course of his employment on October 11, 1993, was previously decided by the Administrative Law Judge in claimant's favor in an Order dated February 7, 1994. The evidence in the transcript of the Preliminary Hearing on February 2, 1994, contains claimant's testimony indicating that one of his symptoms, as a result of such accident, consists of headaches.

Claimant argues that the Appeals Board does not have jurisdiction to review this Preliminary Hearing Order as the jurisdictional issue as to whether the claimant has suffered a personal injury arising out of and in the course of his employment with the respondent has been previously decided and found in claimant's favor in the Administrative Law Judge's Order dated February 7, 1994. Additionally, the claimant's position is that his headaches are a symptom that relates to the nature and extent of his disability and not to the question of whether he suffered a work-related accidental injury.

The Appeals Board agrees with the claimant and finds no jurisdictional basis to review this Preliminary Hearing Order as the issue of whether the claimant has suffered a work-related accidental injury has been decided in a previous preliminary hearing. The Appeals Board further finds that the question of whether claimant's headaches are causally related to the claimant's injury goes more to the nature and extent of claimant's disability and not to the question of whether he suffered a work-related accidental injury.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Alvin E. Witwer, dated May 27, 1994, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of October, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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